

United States
Circuit Court of Appeals
For the Ninth Circuit.

13

LAM FOOK YOU,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration
for the Port of San Francisco,
Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED

MAY 29 1922

F. D. MONKTON,
CLERK.

United States
Circuit Court of Appeals
For the Ninth Circuit.

LAM FOOK YOU,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration
for the Port of San Francisco,

Appellee.

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Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

For Petitioner and Appellant:

M. A. THOMAS, Esq., Humboldt Bank Bldg.,
San Francisco, California.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-
cisco, Calif.

In the Southern Division of the United States Dis-
trict Court, in and for the Northern District
of California, First Division.

No. 17,223.

In the Matter of LIM FOOK YOU on Habeas Cor-
pus.

Praeipice for Transcript on Appeal.

To the Clerk of the Above Court:

Please prepare and certify the record on appeal
in the above-entitled matter, to be composed of the
following papers:

- (1) Petition for writ of habeas corpus;
- (2) Order to show cause;
- (3) Demurrer of respondent;
- (4) Judgment and order sustaining demurrer
and denying petition for discharge on writ of ha-
beas corpus;
- (5) Notice of appeal;
- (6) Petition for appeal;
- (7) Assignment of errors;
- (8) Order allowing appeal;

(9) Stipulation and order for withdrawal of immigration records;

(10) Citation on appeal; and

(11) Clerk's certificate as to record on appeal.

Dated: May 4th, 1922.

M. A. THOMAS,

Attorney for Petitioner and Appellant.

[Endorsed]: Receipt of copy of the within praecipe for transcript on appeal is hereby admitted this 4 day of May, 1922.

JOHN T. WILLIAMS,

U. S. Attorney for Respondent and Appellee.

Filed May 4, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

No. 17,223.

In the Matter of LAM FOOK YOU (19730/28-6 Ex. SS. Nanking 11/27/20), on Habeas Corpus.

Petition for Writ of Habeas Corpus.

To the Honorable, United States District Judge, now Presiding in the United States District Court, in and for the Northern District of California, First Division:

*Page-number appearing at foot of page of original certified Transcript of Record.

It is respectfully shown by the petition of the undersigned that Lam Fook You, hereafter in this petition referred to as "the detained," is unlawfully imprisoned, detained, confined and restrained of his liberty by Edward White, Commissioner of Immigration for the Port of San Francisco, at the Immigration Station at Angel Island, County of Marin, State and Northern District of California, Southern Division thereof; that the said imprisonment, detention, confinement and restraint are illegal, and the illegality thereof consists in this, to wit:

That it is claimed by the said Commissioner that the said detained is a Chinese person and alien not subject or entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 6th, 1882, July 5th, 1884, November 3d, 1893, and April 29th, 1902, as amended and re-enacted by section 5 of the Deficiency Act of April 7th, 1904, which said Acts are commonly known and referred to as the Chinese Exclusion or Restriction Acts; and that he, the said Commissioner, intends to deport the said detained away from and out of the United States to the Republic of China. [2]

That the said Commissioner claims that the said detained arrived at the Port of San Francisco on or about the 27th day of November, 1920, on the S. S. "Nanking," and thereupon made application to enter the United States as the son of a native-born citizen thereof, and that the application of the said detained to enter the United States as a

citizen thereof was denied by the said Commissioner of Immigration, and that an appeal was thereupon taken from the excluding decision of the said Commissioner of Immigration, to the Secretary of the Department of Labor, and that the said Secretary thereafter dismissed the said appeal; that it is claimed by the said Commissioner that in all of the proceedings had herein the said detained was accorded a full and fair hearing; that the action of the said Commissioner and the said Secretary was taken and made by them in the proper exercise of the discretion committed to them by the statute in such cases made and provided, and in accordance with the regulations promulgated under the authority contained in the statutes.

But, on the contrary, your petitioner, on his information and belief alleges that the hearing and proceedings had herein, and the action of the said Commissioner, and the action of the said Secretary was and is in excess of the authority committed to them by the said rules and regulations and by said statutes, and that the denial of the application of the said detained to enter the United States as the son of a native-born citizen thereof, was and is an abuse of the authority committed to them by the said statutes in each of the following particulars hereinafter set forth:

Your petitioner alleges upon his information and belief that the evidence presented before the immigration authorities upon the application of the said detained to enter the United States, which said evidence is now hereby referred to with the

same force and effect as if set forth in full herein, was of such conclusive kind and character establishing the birth of the father of the [3] detained within the United States, and hence showing the said detained to be the son of a native-born citizen thereof, and which said evidence was of such legal weight and sufficiency that it was an abuse of discretion on the part of the said Commissioner and the said Secretary to deny the said detained the right to admission into the United States and instead thereof to refuse to be guided by said evidence, and the said adverse action of the said commissioner and the said Secretary was, your petitioner alleges upon his information and belief, arrived at and was done in denying the said detained the fair hearing and consideration of his case to which he was entitled. Said action was done in excess of the discretion committed to the said Secretary and the said Commissioner of Immigration. And your petitioner further alleges upon his information and belief, that the said action of the said Secretary and the said Commissioner was influenced against the said detained and against his witnesses solely because of his being of the Chinese race.

That your petitioner has not in his possession the whole of the said proceedings had before the said Commissioner and the said Secretary of Labor, but has in his possession and offers as a part thereof, as a separate exhibit and marked Exhibit "A," a partial record of such proceedings, and your petitioner alleges his willingness to incorpor-

ate and have considered as part and parcel of his petition, the whole of said immigration record when the same shall have been received from the Secretary of Labor at Washington, and have it presented to this Court at the hearing to be had hereon.

That it is the intention of the said Commissioner to deport the said detained out of the United States, and away from the land of which he is a citizen, by the S. S. "Nile," sailing from the Port of San Francisco on the 26th day of May, 1921, unless this Court intervenes to prevent said deportation. [4]

That the said detained is in detention as aforesaid, and is a minor of tender years and for that reason is unable to verify this petition upon his own behalf, and for that reason this petition is verified by his father, your petitioner herein, but for and as the act of the said detained.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said Commissioner, commanding and directing him to hold the body of the said detained within the jurisdiction of this Court, and to present the body of the said detained before this Court at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired into to the end that the said detained may be restored to his liberty and go hence without day.

Dated: San Francisco, California, May 21st,
1921.

LAM KIM TONG,
Petitioner.

M. A. THOMAS,
Attorney for Petitioner, 502 Hum-
boldt Bank Bldg., 785 Market
Street, San Francisco, California.

[5]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

The undersigned, being first duly sworn, deposes
and says:

That he is the petitioner named in the foregoing
petition; that the same has been read and ex-
plained to him and he knows the contents thereof;
that the same is true of his own knowledge, except
as to those matters which are therein stated on
his information and belief, and as to those mat-
ters he believes it to be true.

LAM KIM TONG,
Petitioner.

Subscribed and sworn to before me this 21st day
of May, 1921.

[Seal] J. D. BROWN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed May 21, 1921. W. B. Mal-
ing, Clerk. By C. W. Calbreath, Deputy Clerk.

[6]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

No. 17,223.

In the Matter of LAM FOOK YOU (19730/28-6
Ex SS. Nanking 11/27/20) on Habeas Corpus.

Order to Show Cause.

Good cause appearing therefor, and upon reading the verified petition herein,—

IT IS ORDERED that Edward White, Commissioner of Immigration for the Port of San Francisco, appear before this Court on the 28th day of May 1921, at the hour of 10 o'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued as herein prayed for, and that a copy of this order be served upon the said Commissioner.

AND IT IS FURTHER ORDERED that the said Edward White, Commissioner of Immigration as aforesaid, or whoever acting under the orders of the said Commissioner or the Secretary of Labor, shall have the custody of the said Lam Fook You, are hereby ordered and directed to retain the said Lam Fook You within the custody of the said Commissioner of Immigration, and within the jurisdiction of this Court until its further order herein.

Dated: San Francisco, California, May 21st, 1921.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed May 21, 1921. W. B. Mal-
ing, Clerk. By C. W. Calbreath, Deputy Clerk.
[7]

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia, First Division.

No. 17,223.

In the Matter of LAM FOOK YOU, on Habeas
Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Comes now the respondent, Edward White, Com-
missioner of Immigration, at the Port of San Fran-
cisco, in the Southern Division of the Northern
District of California, and demurs to the petition
for a writ of habeas corpus in the above entitled
cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts suffi-
cient to entitle petitioner to the issuance of a writ
of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the
statements therein relative to the record of the
testimony on the trial of the said applicant are
conclusions of law and not statements of the ulti-
mate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

FRANK M. SILVA,
United States Attorney,
BEN F. GEIS,
Asst. United States Attorney,
Attorneys for Respondent.

[Endorsed]: Filed July 2, 1921. W. B. Mal-
ling, Clerk. By Lyle S. Morris, Deputy Clerk.
[8]

In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia, First Division.

No. 17,223.

In the Matter of LAM FOOK YOU, on Habeas
Corpus.

**(Order Sustaining Demurrer to and Denying
Petition for a Writ of Habeas Corpus.)**

M. A. THOMAS, Esq., Attorney for Petitioner.

JOHN T. WILLIAMS, Esq., United States At-
torney, and BEN F. GEIS, Esq., Assistant
United States Attorney, Attorneys for Re-
spondent.

**ON DEMURRER TO PETITION FOR A WRIT
OF HABEAS CORPUS.**

The demurrer to the petition for a writ of
habeas corpus herein is sustained, and said peti-
tion is denied.

March 6th, 1922.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Mar. 6, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[9]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

No. 17,223.

In the Matter of LIM FOOK YOU, on Habeas Corpus.

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to
Hon. JOHN T. WILLIAMS, United States
Attorney for the Northern District of California:

You and each of you will please take notice that Lim Fook You, the petitioner and the detained above named, does hereby appeal to the Circuit Court of Appeals of the United States, for the Ninth Circuit thereof, from the order and judgment made and entered herein on the 6th day of March, 1922, sustaining the demurrer to and in denying the petition for discharge on a writ of habeas corpus filed herein.

Dated: San Francisco, California, March 11th, 1922.

M. A. THOMAS,
Attorney for Detained and Petitioner. [10]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 17,223.

In the Matter of LIM FOOK YOU, on Habeas Corpus.

Petition for Appeal.

Now comes Lim Fook You, the petitioner, and the appellant, herein named, and says:

That on the 6th day of March, 1922, the above-entitled court made and entered its order sustaining the demurrer to the petition for a writ of habeas corpus and denying the petition for discharge as prayed for and on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

WHEREFORE, this appellant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals of the United States, for the Ninth Circuit thereof, for the correction of the errors so complained of, and further, that a transcript of the record, proceedings and papers in

the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals, for the Ninth Circuit thereof; and further, that the appellant and detained be admitted to bail during the pendency of the appeal herein, upon giving a bond before a Commissioner of this Court in the sum of one thousand dollars (\$1,000), conditioned [11] that he will return and surrender himself in execution of whatever judgment may be final herein.

Dated: San Francisco, California, March 11th, 1922.

M. A. THOMAS,

Attorney for Petitioner and Appellant Herein.

[12]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 17,223.

In the Matter of LIM FOOK YOU, on Habeas Corpus.

Assignment of Errors.

Comes now Lim Fook You, by his attorney, M. A. Thomas, Esq., in connection with his petition for an appeal herein, and assigns the following errors which he avers occurred upon the trial or hearing of the above-entitled cause, and upon which he will

rely upon appeal to the Circuit Court of Appeals, for the Ninth Circuit, to wit:

First: That the Court erred in sustaining the demurrer to the petition for a writ of habeas corpus herein.

Second: That the Court erred in denying the petition for discharge of the detained and appellant herein.

Third: That the Court erred in holding that it had no jurisdiction to issue a writ of habeas corpus as prayed for in the petition herein.

Fourth: That the Court erred in not holding that the Commissioner of Immigration and the Secretary of Labor acted beyond their statutory authority and without jurisdiction in denying the application of the detained to enter the United States, he having furnished evidence satisfactory and establishing his status as the son of a native born citizen of the United States [13]

Fifth: That the Court erred in not holding that the action of the said Commissioner and the said Secretary in denying the application of the detained to enter the United States was an abuse of the discretion committed to them by the statute in such cases made and provided, and in accordance with the regulations promulgated under the authority contained in said statute.

Sixth: That the Court erred in holding that the evidence presented before the immigration authorities upon the application of the detained to enter the United States was not of such conclusive kind and character establishing the birth of the father

of the detained within the United States, and showing that the detained is the son of a native-born citizen thereof. That it was an abuse of discretion on the part of the said Commissioner and the said Secretary to deny the said detained the right to admission into the United States, and to refuse to be guided by said evidence.

Seventh: That the Court erred in holding that the said Commissioner and Secretary did not deny the detained a fair hearing and consideration in this case, to which he was entitled under the law.

WHEREFORE, the appellant prays that the judgment and order of the Southern Division of the United States District Court, for the Northern District of California, First Division, made and entered herein in the office of the clerk of said court on the 6th day of March, 1922, discharging the order to show cause and sustaining the demurrer, and in denying the petition for a writ of habeas corpus, be reversed, and that this cause be remitted to the said lower court with instructions to discharge [14] the said Lim Fook You from custody, or grant him a new trial before the lower court, by directing the issuance of the writ of habeas corpus as prayed for in said petition.

Dated: San Francisco, Cal., March 11th, 1922.

M. A. THOMAS,

Attorney for Petitioner and Appellant.

[Endorsed]: Filed Mar. 11, 1922, W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 17,223.

In the Matter of LIM FOOK YOU, on Habeas Corpus.

Order Allowing Petition for Appeal.

On this 11th day of March, 1922, came Lim Fook You, the detained herein, by his attorney, M. A. Thomas, Esq., and having previously filed the same herein, did present to this court his petition praying for the allowance of an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, intended to be urged and prosecuted by him, and praying also that a transcript of the record and proceedings and papers upon which judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper;

ON CONSIDERATION WHEREOF, the Court hereby allows the appeal herein prayed for, and orders execution and deportation stayed pending the hearing of the said case in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: San Francisco, Cal., March 11th, 1922.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed Mar. 11, 1922. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [16]

In the Southern Division of the United States Dis-
trict Court, in and for the Northern District
of California, First Division.

No. 17,223.

In the Matter of LIM FOOK YOU, on Habeas
Corpus.

**Stipulation and Order for Withdrawal of Immi-
gration Records.**

It is hereby stipulated and agreed by and between
the respective parties hereto, through and by their
attorneys herein, that the original immigration
records in evidence and considered as part and
parcel of the petition for a writ of habeas corpus
upon hearing of the demurrer in the above-entitled
matter, may be withdrawn from the files of the
clerk of the above-entitled court and filed with the
clerk of the United States Circuit Court of Appeals
for the Ninth Circuit, there to be considered as part
and parcel of the record on appeal in the above-
entitled case with the same force and effect as if
embodied in the transcript of the record and so
certified by the clerk of this Court.

Dated: San Francisco, Cal., March 25, 1922.

M. A. THOMAS,

Attorney for Appellant and Petitioner.

JOHN T. WILLIAMS,

U. S. Attorney for Respondent and Appellee
Herein. [17]

ORDER.

Upon reading and filing the foregoing stipulation, it is hereby ORDERED that the said Immigration Records therein referred to may be withdrawn from the office of the clerk of this court and filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, said withdrawal to be made at the time the record on appeal herein is certified to by the clerk of this court.

Dated: San Francisco, Cal., May 4th, 1922.

M. T. DOOLING,
U. S. District Judge.

[Endorsed]: Receipt of copy of the within stipulation and order for withdrawal of immigration records, is hereby admitted this 4 day of May, 1922.

JOHN T. WILLIAMS,
U. S. Attorney for Respondent and Appellee
Herein.

Filed May 4, 1922. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [18]

Certificate of Clerk U. S. District Court to Transcript on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 18 pages, numbered from 1 to 18, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the Matter of Lam Fook You, on Habeas Corpus, No. 17,223, as the same now

remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal (copy of which is included in this transcript) and the instructions of the attorney for petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Six Dollars and Eighty-five Cents (\$6.85), and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original citation on appeal, (page 20).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 11th day of May, A. D. 1922.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk. [19]

Citation on Appeal.

UNITED STATES OF AMERICA—ss.

The President of the United States, to Hon. EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco, and to JOHN T. WILLIAMS, United States Attorney for the Northern District of California, His Attorney Herein, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals,

for the Ninth Circuit, to be holden at the city and county of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the Southern Division of the United States District Court for the Northern District of California, wherein Lim Fook You is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 4th day of May, 1922.

M. T. DOOLING,

United States District Judge. [20]

Receipt of copy of the within citation on appeal is hereby admitted this 4th day of May, 1922.

JOHN T. WILLIAMS,

U. S. Attorney for Respondent and Appellee.

[Endorsed]: No. 17,223. In the Southern Division of the United States District Court, in and for the Northern District of California, First Division. In the Matter of Lim Fook You, on Habeas Corpus. Citation on Appeal. Filed May 4, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[Endorsed]: No. 3873. United States Circuit Court of Appeals for the Ninth Circuit. Lam Fook You, Appellant, vs. Edward White, as Commis-

sioner of Immigration for the Port of San Francisco, Appellee. Transcript of Record, Upon Appeal From the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed May 11, 1922.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

Certificate of Clerk U. S. District Court to Original Exhibits.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the accompanying exhibits, known as and marked:

Respondent's Exhibit "A" (Immigration Records),	
Respondent's Exhibit "B"	"
Respondent's Exhibit "C"	"
Respondent's Exhibit "D"	"
Respondent's Exhibit "E"	"
Respondent's Exhibit "F"	"
Respondent's Exhibit "G"	"
Respondents Exhibit "H"	"

—are the original exhibits filed in the Matter of Lam Fook You, on Habeas Corpus, No. 17,223, and are transmitted herewith in accordance with a stipulation and order of Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 11th day of May, A. D. 1922.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk.

[Endorsed]: No. 17,223. In the Southern Division of the U. S. District Court, Northern District of California, First Division. In the Matter of Lam Fook You on Habeas Corpus. Certificate to Original Exhibits.

No. 3873. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 11, 1922. F. D. Monckton, Clerk.